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**IN THE
COURT OF APPEALS OF INDIANA**

VONEY L. GREENHILL,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A05-0612-CR-684

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0505-FB-182

JUNE 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Voney L. Greenhill appeals his conviction of criminal confinement as a Class B felony. Ind. Code § 35-42-3-3.

We affirm.

ISSUE

Greenhill presents one issue which we restate as: whether there was sufficient evidence to sustain the conviction of criminal confinement as a Class B felony.

FACTS AND PROCEDURAL HISTORY

In May 2005, Greenhill went out drinking with his girlfriend, Tina Tomlinson, the victim in this case. Greenhill and Tomlinson were accompanied by Tomlinson's daughter, Sarah Gardzalla, and a friend of Sarah. The four returned to Tomlinson's home in the very early morning hours, and Tomlinson and Greenhill began arguing. Tomlinson had a history of becoming violent when she drank, so to protect himself and the others in the house, Greenhill bound her with rope. Later, when Sarah attempted to remove the rope from her mother's wrists, she discovered that the rope was also wound around Tomlinson's neck. Tomlinson's face was blue, and she was not breathing. Tomlinson died.

Based upon this incident, Greenhill was charged with voluntary manslaughter as a Class A felony, aggravated battery as a Class B felony, criminal confinement as a Class B felony, and reckless homicide as a Class C felony. A jury found Greenhill guilty of aggravated battery, criminal confinement, and reckless homicide. In this appeal, Greenhill challenges his conviction of criminal confinement.

DISCUSSION AND DECISION

As his sole issue on appeal, Greenhill contends that the State's evidence was not sufficient to support his conviction of criminal confinement as a Class B felony. Specifically, he asserts that the State failed to prove the serious bodily injury element of this offense.

Our standard of review with regard to sufficiency claims is well settled. We neither weigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence favorable to the verdict and all reasonable inferences which can be drawn therefrom. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997). If there is substantial evidence of probative value from which a trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. *Id.* Moreover, we are mindful that the trier of fact is entitled to determine which version of the incident to credit. *Barton v. State*, 490 N.E.2d 317, 318 (Ind. 1986), *reh'g denied*.

In the present case, the State charged Greenhill with criminal confinement, as a Class B felony, as follows:

On or about May 7, 2005 in Madison County, State of Indiana, Voney L. Greenhill Jr. did knowingly confine another person, to-wit: Tina A. Tomlinson without the consent of Tina Tomlinson resulting in serious bodily injury to Tina Tomlinson.

Appellant's Appendix at 20. The general offense of criminal confinement is a Class D felony, but the offense is elevated to a Class B felony if it is committed either while armed with a deadly weapon, or if it results in serious bodily injury to a person other than the person doing the confining, or if committed on an aircraft. *See* Ind. Code § 35-42-3-

3. Here, the State charged the offense as a Class B felony based upon its allegation that Greenhill caused Tomlinson serious bodily injury when he confined her. “Serious bodily injury” is defined in Ind. Code § 35-41-1-25 as: bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus. Greenhill challenges the State’s evidence only as to this element of the offense. He claims the evidence shows that Tomlinson suffered only minor injuries as a result of the confinement. Accordingly, Greenhill requests relief in the form of reducing his conviction to a Class D felony.

At trial, Dr. Mellen, a forensic pathologist who performed an autopsy on Tomlinson, testified that Tomlinson’s hyoid bone (which is located in the neck) was fractured. He stated that although this injury is more likely caused by something striking or crushing the neck, it is possible that a rope around the neck could cause this type of fracture. Dr. Mellen did not believe Tomlinson’s fractured hyoid bone was caused by the rope in this case because he did not see any ligature marks on Tomlinson’s neck.¹ Tr. at 320, 322, 338-39. However, David Riser, a detective with the Madison County Sheriff’s Department, testified that he saw ligature marks around Tomlinson’s neck. Tr. at 376-77. Daniel Ingram, Assistant Fire Chief of the Alexandria Fire Department, also testified that he saw ligature marks on Tomlinson’s neck. Tr. at 221. In addition, Sarah testified that when she attempted to get the rope from around her mother’s neck, she had “to tug

¹ Ligature marks were described during trial testimony as bruise marks on the skin caused by being bound, such as by rope. See Tr. at 214.

extremely hard” and “use both hands to pull” the rope away from her mother’s neck. Tr. at 85 and 112.

Greenhill’s argument essentially asks that we recognize only the testimony of Dr. Mellen and ignore other evidence presented to the jury, specifically the testimony of Riser and Ingram stating that they both saw ligature marks on Tomlinson’s neck. Upon a challenge to the sufficiency of the evidence supporting a conviction, this Court, as a reviewing court, does not reweigh the evidence or judge the credibility of the witnesses, and we respect the jury’s exclusive province to weigh conflicting evidence. *Collier v. State*, 846 N.E.2d 340, 344 (Ind. Ct. App. 2006), *trans. denied*, 860 N.E.2d 585. The testimony of Riser, Ingram and Sarah supports the jury’s finding that Tomlinson had ligature marks on her neck and that the rope caused the fracture of her hyoid bone, thereby causing her serious bodily injury. We will not disturb the jury’s determination.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the State presented sufficient evidence to sustain the jury’s finding of serious bodily injury as required for Greenhill’s conviction of criminal confinement as a Class B felony.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.